

Federal Communications Commission

DA 99-1669

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 98-179
Table of Allotments,) RM-9344
FM Broadcast Stations.)
(Oraibi and Leupp, Arizona))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 11, 1999

Released: August 20, 1999

By the Chief, Allocations Branch:

1. The Commission has before it the Notice of Proposed Rule Making ("Notice") in this proceeding. 13 FCC Rcd 18844 (1998). Oraibi Media Association ("Oraibi Media") filed Comments and Guyann Corporation ("Guyann") filed Reply Comments.¹ For the reasons discussed below, we are granting the proposal set forth in the Notice.

2. At the request of Oraibi Media, permittee of Station KBDT, Channel 255C, Oraibi, Arizona, the Notice proposed reallocating Channel 255C from Oraibi to Leupp, and modifying the Station KBDT authorization accordingly. This reallocation proposal was filed pursuant to Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.²

3. In considering a reallocation proposal, the Commission compares the existing allotment versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures ("FM Priorities"), 90 FCC 2d 88 (1982). In making this evaluation we consider the "totality of factors." LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337 (1995). Although the licensee does not plan to relocate its transmitter site, its reallocation proposal would provide a 70 dBu signal over 90 percent of the Flagstaff Urbanized Area. Portions of Flagstaff, Arizona were recognized as an Urbanized Area in 1996. In this light, the Notice required Oraibi Media to submit

¹ Oraibi Media also filed a motion to strike Guyann's Reply Comments, claiming that those Reply Comments do not refute Oraibi Media's showing that Leupp is a community independent from Flagstaff and that the public interest would be served by providing Leupp with its first local service. Oraibi Media's motion is denied. The purpose of reply comments is to address issues raised in any filed comments. See Section 1.415(c) of the Rules. Reply commenters are not required to refute initial comments.

² See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

additional information responsive to a Tuck analysis³ to determine whether Leupp is sufficiently independent of the Flagstaff urbanized area to merit a first local service preference or whether it should be credited with all of the authorized services in the Flagstaff urbanized area. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352. Further, since Station KBDT would continue to serve the same area presently served after the proposed reallocation of Channel 255C from Oraibi to Leupp, the Notice requested additional information concerning the public interest benefits that would result from that reallocation.

4. In its Comments, Oraibi Media observes that its coverage map submitted with its petition for rulemaking demonstrates that its coverage of Flagstaff is incidental to the entire coverage area of its station and that most of the station's service area is apart from Flagstaff, including much of the northeast corner of Arizona and much of the Navajo Indian Reservation. Further, Oraibi Media notes that Leupp, with a population of 857 (1990 U.S. Census), is about 45 miles from Flagstaff, with a population of 45,857, and that the communities are separated by a large, sparsely populated area, which demonstrates that Leupp is not just part of the Flagstaff metropolitan area. Oraibi Media also stresses that Leupp is part of the Navajo Nation, looking to the reservation for a definition of its needs and interests, rather than to Flagstaff.⁴ In this light, Oraibi Media claims that reallocating Station KBDT to Leupp would provide a media outlet which can be used to address social and political issues relevant to both the Leupp community and the Navajo Nation as a whole. In addition, Oraibi Media claims that Leupp has several local businesses which employ Leupp residents and that community leaders and residents of Leupp perceive Leupp as being independent of nearby communities. The licensee also observes that Leupp conducts annual events, such as a Thanksgiving dinner for all Leupp residents, which help foster its own unique Navajo identity. Leupp is one of 110 Chapter communities governed by the Navajo Tribal Authority. Oraibi Media states that, as a chapter, Leupp has two district delegates to the Navajo Nation, as well as its own President, Vice president, Secretary, and a Community Services Coordinator, all of whom are elected by local Leupp residents.

5. Guyann submitted Reply Comments in which it did not contest the fact that Leupp is a community sufficiently independent of Flagstaff to deserve its own local radio service. Rather, Guyann claimed that Oraibi Media's Comments did not identify additional public interest benefits, beyond those stated in its Petition for Rulemaking, that would result from its reallocation request. Guyann states its belief that the Commission requested that Oraibi Media submit an additional public interest showing to alleviate its suspicion that Oraibi Media's reallocation request will not serve the public interest. Guyann asserts that since Oraibi Media will not be changing its currently authorized transmitter location, both Oraibi and Leupp will receive a 70 dBu signal regardless of the community of license. Guyann suggests that Oraibi Media wishes to change its community of license so that it can move its transmitter in the future and provide better coverage to the Flagstaff urbanized area.

³ See Huntington Broadcasting Co., 192 F.2d 33 (D.C. Cir. 1951); RKO General Inc. ("KFRC"), 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988).

⁴ Oraibi Media reports that the Navajo Tribal Utility Authority oversees the water, sewer, electricity and gas facilities for Leupp.

6. We have determined that the community of Leupp is sufficiently independent of Flagstaff to merit a first local service preference pursuant to the Commission's FM Priorities.⁵ We believe that reallocating Station KBDT to Leupp would provide a media outlet that can be used to address social and political issues relevant to both the Leupp community and the Navajo Nation as a whole. Further, in comparing the existing allotment at Oraibi versus the proposed allotment at Leupp, we have determined that reallocating the station to Leupp will result in a preferential arrangement of allotments. In this regard, we observe that Oraibi's population is included with that of Kykotsmobi Village, which is listed as a "census designated place" in the 1990 U.S. Census.⁶ The population of that census designated place is 773, whereas the 1990 U.S. Census lists the population of Leupp as being 857. Thus, Channel 255C is being reallocated to a larger community. Any suggestion that Oraibi Media may subsequently relocate its transmitter site closer to Flagstaff amounts to speculation and does not obviate our finding that the reallocation of Channel 255C to Leupp will result in a preferential arrangement of allotments. Lastly, we note that even though the proposed reallocation will deprive Oraibi of its sole local authorization as Station KBDT is the only station licensed to serve the community, Station KBDT has not been constructed. Therefore, we do not consider its removal from Oraibi to present parallel concerns with loss of service represented by the removal of an operating station, as it does not constitute a service upon which the public has become reliant. See, e.g., Sanibel and San Carlos Park, Florida, 10 FCC Rcd 7215 (1995). Further, since Oraibi Media has stated that it does intend to relocate its transmitter site, Oraibi would receive a 70 dBu signal from Station KBDT once it becomes operational.

7. Channel 255C can be allotted to Leupp at Oraibi Media's current transmitter site located 42.2 kilometers (26.2 miles) north of the community at coordinates 35-26-34 NL and 110-58-40 WL, consistent with the technical requirements of the Commission's Rules.

8. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, that effective October 4, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Leupp, Arizona	255C
Oraibi, Arizona	_____

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of Oraibi Media Association for Station KBDT(FM), Oraibi, Arizona, IS MODIFIED to specify Leupp, Arizona, in lieu of Oraibi, Arizona, as the community of license, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the permittee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

⁵ The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (co-equal weight is given to priorities (2) and (3)).

⁶ See the 1998 Rand McNally Commercial Atlas & Marketing Guide.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.13207 of the Commission's Rules.

10. Pursuant to Commission Rule Sections 1.1104(1)(k) and (2) (k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Oraibi Media Association, permittee of Station KBDT(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license.

11. IT IS FURTHER ORDERED, That this proceeding is terminated.

12. For further information concerning this proceeding, contact R. Barthen Gorman, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau